

qrulepubliccomments

From: Julia Egerer [Julia.Egerer@aea.be]
Sent: Tuesday, February 28, 2006 11:59 AM
To: qrulepubliccomments
Subject: AEA submission to NPRM on Control of Communicable Diseases (42 CFR Parts 70 & 71)
Importance: High
Attachments: AEA_PositionPaper_US_CDC_23Jan06.pdf; Lt_MsBrooks.pdf

Dear Ms Brooks

Please find attached the AEA letter and submission on the NPRM on Control of Communicable Diseases (42 CFR Parts 70 & 71).

Kind regards,

Julia Egerer

<<AEA_PositionPaper_US_CDC_23Jan06.pdf>>

<<Lt_MsBrooks.pdf>>

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2/28/2006

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28 February 2006

DOCKET 42 CFR Part 70/71

Dear Ms Brooks,

Please find attached the comments from the Association of European Airlines (AEA) on the notice of proposed rule making of the Department of Health and Human Services Centers for Disease Control and Prevention on Control of Communicable Diseases (42 CFR Parts 70 and 71) (Federal Register / Vol. 70, No. 229, November 30, 2005).

The AEA welcomes the opportunity to comment on those proposed changes which, if implemented, would have considerable costs and operational consequences for the airline industry and places unreasonably, and in some cases impossible, burdens on European air carriers.

The AEA fully supports the objectives of CDC and proposes an alternative more cost-efficient solution in the form of passenger locator cards. In its current form, the NPRM blurs the distinction between public responsibility and that of commercial airlines. While it is a governmental responsibility to prevent the outbreak of pandemic infections, airlines to whom this task of public health protection is delegated should at least be reimbursed for the costs incurred. AEA furthermore points out that collection and storage of data for 60 days may conflict with European data protection laws. The new data elements required from passengers are not included in the existing EU-US agreement on transfer of passenger data, which are currently the subject of a legal challenge before the European Court of Justice.

AEA has formally requested clearance from the European Commission that additional passenger data to new US agencies would not contradict EU data protection laws. Communications with respect to the attached AEA position paper can be addressed to :

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Kind regards,



Julia Egerer

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Position Paper

23 January 2006

AEA Position on US legislative proposal regarding passenger screening to control communicable diseases

US Notice of Proposed Rule Making (NPRM) : US Department of Health and Human Services 42 Code of Federal Regulations (CFR) Parts 70 and 71

Executive Summary

On 30 November 2005, the US Department of Health and Human Services (HHS) and the Centre for Disease Control (CDC) issued a Notice of Proposed Rule Making (NPRM) on the Control of Communicable Diseases¹. In order to prevent the introduction, transmission or spread of communicable diseases, e.g. avian influenza, into the US, the NPRM proposes a number of changes to 42 CFR (Code of Federal Regulation) Parts 70 (foreign arrivals) and 71 (interstate matters). These existing regulations implement federal quarantine authority.

The Association of European Airlines (AEA) welcomes the opportunity to comment on those proposed changes which, if implemented, would have considerable costs and operational consequences for the airline industry.

Furthermore, the NPRM blurs the distinction between public responsibility and that of commercial airlines. It is a governmental responsibility to prevent the outbreak of pandemic infections. If airlines are to be delegated the task of public health protection, at least the costs incurred should be reimbursed.

AEA furthermore points out that collection and storage of data for 60 days may conflict with European data protection laws. The new data elements required from passengers are not included in the existing EU-US agreement on transfer of passenger data, which are currently the subject of a legal challenge before the European Court of Justice. AEA has formally requested clearance from the European Commission that additional passenger data to new US agencies would not contradict EU data protection laws.

¹ For more information see: <http://www.cdc.gov/ncidod/dq/nprm/index.htm>

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Detailed AEA Position on the NPRM on 42 CFR Parts 70 and 71

§ 71.4 Bills of health

The proposal proposes a 'Bill of Health' for any aircraft departing for the USA if requested by the Director of CDC. AEA asks that in the case that an air carrier receives notification for the need of a "bill of health", there should be sufficient advanced notification to avoid delaying the departure of flights and that the authorities processing the bill of health are sufficiently staffed to process the expected volume of requests.

§71.5 Suspension of entries and imports from designated places

It is the sovereign decision of the US government to decide on suspending the entry of air carriers into the US from certain countries or regions. As previously pointed out to EU governments in the context of measures on avian influenza, the AEA would like to point out that the spread of such a pandemic flu would be merely delayed, rather than prevented, even if 99.9% of inbound travel was prevented.

§ 71.6 Report of death or illness on board flights

Aircraft cabin crew report any death on board to the aircraft commander. However, only serious illnesses may be reported to the commander, for example if the conditions of the illness would require the aircraft to be diverted. The proposed definition of "ill person" as proposed in §70.1 and §71.1, with its clinical descriptions of symptoms, does not provide any particular aid to lay crew members.. For purposes of consistency with guidance material from the International Civil Aviation Organization (ICAO), CDC is encouraged to modify its proposed definition of "ill person" to a form similar to that used by ICAO - "ill person with suspected communicable disease". Paragraph (b) of §71.6 states that the CDC Director may order airlines to disseminate public health notices, recommended public health notices and other information. This could present the carrier with a logistics problem if, as happened during the SARs outbreak, European carriers received different notification demands from a variety of governments and public health authorities. There is the potential risk that different demands contradict each other and lead to confusion and compliance difficulties. We request that information meet an agreed global standard. Organisations such as the WHO, IATA and ICAO should play a leading role in defining such global standards and carriers will be better placed to disseminate information if it conforms to a single global format and message.

§ 71.7 Written plan for reporting of deaths or illness on board flights & designation of an airline agent

The reporting requirements of the Director may differ from the general procedure applied by the air carrier. This may lead to confusion by the operating crews in the event of an incident. Paragraph (b) and (c) specify that the plan shall include the name and contact details of an airline agent for the Director on a 24 hour, seven days a week basis. Air carriers can meet this requirement during normal business hours, but

this contact can only be a position, for example, a duty officer, rather than a named individual as suggested in paragraph (b).

§ 71.10 Passenger information

Those elements of the NPRM of greatest concern to air carriers relate to requirements for submission of passenger information to CDC resulting in significant costs ranging from reprogramming of IT systems, to operational concerns and communication costs.

- Storage of data for 60 days and provision of data within 12 hours

Paragraph (b) requires the carrier to maintain the required data for 60 days following the end of the journey. As most carriers, European carriers store passenger information in two individual live data-base systems; the reservation system and the departure control system (DCS). Those systems do not maintain data in the live system for 60 days. Instead, data is removed from the reservations system once the final booked flight has been flown, and data from DCS is deleted approximately 24 hours after the flight has been completed. Provided that European and national data protection laws, which may impose stricter criteria for the storage and delivery of personal data than the EU, allow for the transfer of additional passenger data, the requirement to maintain data for 60 days would require air carriers to build a new data-base with a capability to store and generate the required data. This is a wholly unreasonable demand since updating existing systems only to allow the storage of data for 60 days to respond to CDC requirements has no economical rational.

In paragraph (d) the carrier must provide the required data within 12 hours of a request by the Director. This suggests that the data will only be required on an occasional basis. It is an excessive and disproportionate demand placed on air carriers to solicit and store data for all passengers and on all flights destined to the USA when the data will be required only occasionally. AEA carriers carry about 23 million passengers to the USA annually, and the solicitation of additional data from these passengers places an unacceptable and permanent burden on carriers.

- Potential conflict with EU privacy regulations & conflicts with the EU-US agreement on transfer of passenger data.

There are many overlaps between the passenger information collection, retention and transmission system proposed in this NPRM and the data requested by the EU-US agreement on transfer of passenger data. In addition, the US Department for Homeland Security's (DHS) Advance Passenger Information System (APIS) rule has since October 2004 requested additional data such as the passengers' address while in the US. The CDC NPRM includes data that is not included in the EU-US agreement such as the passengers' phone number, emergency contact, email address and home address, travelling companion and return flight information, some of which is personal and may conflict with European data protection laws. AEA carriers that are subject to EU law have requested clearance from the European Commission before any additional data can be collected from passengers.

- Single window principle for data submission

In addition, the AEA objects to sending similar data to more than one government agency in the USA. The single window principle is currently applied by the US

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Customs and Border Protection Agency (CBP), to whom airlines already send passport information for passengers and crew. Most of the required data already resides in the Passenger Name Records (PNRs) held within the Reservations system which is already transmitted to CBP Subject to European data protection laws and the approval of the European Commission, we believe that rather than establishing a separate information system for quarantine purposes, the CDC should therefore obtain data from CBP.

The requested data fields are specified in paragraph (e). The full name, passport number (including issuing country), and certain flight information is already sent to CBP as part of the standard Advance Passenger Information (API) message. This is sent for passengers and crew of all flights destined to the USA. Emergency contact information, e-mail address, home address, name of travelling companions or group, returning flight information and phone numbers may also reside in the PNR, but very often might not have been collected and is therefore not available at all.

Requiring carriers to solicit the information and store it in a new data-base while most of the data are already available to the US authorities will generate major disruption at departure airports and result in higher costs for airlines and longer check ins for their customers. Carriers are already facing an onerous and costly task in having to collect additional API data for CBP, such as the country of residence and the address whilst in the USA from passengers. The CDC requirement will add to this already difficult task and will impose additional operational and infrastructural constraints on our operations. This could result in the delay to flights and the cancellation of flights during peak periods.

▪ The Point of Sale and Point of Departure Data Collection Scenarios

The majority of tickets in Europe are still sold via travel agents. Regarding point of sale (POS) collection and for commercial reasons it will be difficult for carriers to obtain certain passenger information such as home address, e-mail address and passenger phone numbers from travel agents for fear that carriers will make direct contact with their clients. Passengers making direct contact with the air carrier by way of telephone or internet will become frustrated by the extended length of transactions and will be encouraged to terminate reservations transactions before they complete. For example, a passport holder from the EU destined for the USA would have to disclose 15 passenger information elements to the US authorities ranging from name of passport to phone number :

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|----------------------------------|--|
| 1. name as in passport; | 10. emergency contact information; |
| 2. passport number; | 11. e-mail address; |
| 3. country that issued passport; | 12. home address; |
| 4. nationality; | 13. name of travelling companions or group; |
| 5. expiry date of passport; | 14. return flight information (if not in same booking record); and |
| 6. country of residence; | 15. one phone number. |
| 7. gender; | |
| 8. date of birth; | |
| 9. address whilst in the USA; | |

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This is clearly an unreasonable and unacceptable burden for passengers, and will add to the growing bureaucratic demands being made by the US authorities of passengers travelling to the USA².

Moreover, paragraph (f) of this section confirms that the Director may also require the transmittal of additional information. Without knowledge of what this information is, we are unable to comment but wish to outline the any additional requirement will further deteriorate operations at continuously growing cost for airlines and their customers.

Information is also required for crew members. Some data is not stored by the carrier and compliance will add cost and complexity to crew operations and systems.

§ 71.11 Written plan for passenger information and designation of an airline agent

The schedule set out in the NPRM of submitting a written plan of action on how airlines would implement the data collection, storage and transmission requirements envisaged in §71.10 is not compatible with airline constraints and the need to allocate rationally scarce human and technical resources. Experience shows that this would be a very complex process to set up, requiring input from across the business as well as external expertise. We would recommend to extend the timeframe to at least 12 months after the publication of the final rule.

§ 71.11 UN – EDIFACT and machine readable only data should be maintained as global standard

Paragraph (g) states that the Director may require airlines to transmit data in a format available to both airline and the Director. The global standard for the transmission of passenger information to the border control authorities is the UN EDIFACT format, which is available in a machine-readable only format. It should be noted that there is no global message standard for many of the data fields specified in the NPRM.

3. Conclusion

The AEA believes that the NPRM cost assessment of USD 10 million is vastly underestimated, because actual costs are not limited to programming costs. Since most of the additional information may have to be collected at point of departure (PoD) the check in time will increase considerably leading to additional airport capacities and staff. For the new data requirement included in the APIS Final Rule, the AEA calculated that anything 3 to 7 minutes per passenger is more realistic. Costs of accommodation and compensation due to missed flight connections would also have to be included.

As stated above, the proposed electronic collection of additional data is highly bureaucratic, costly and vastly disproportionate. While the NRPM suggests additional costs of a staggering USD 10 million for each larger air carrier, it is AEA's view that these expenses are unnecessary, given the vast amount of data included in the PNR

² The US demands that passengers travelling under the visa waiver scheme be in possession of machine-readable passports, new passports with digital photographs and from October 2006 new passports must store a biometric.

and API messages already available to CBP. The NPRM would compromise carriers' operations and prove difficult to comply with for an indefinite purpose.

In addition, current privacy legislation, in the EU does not permit airlines to collect passengers' personal data which is not required for the purpose of the transportation, nor to hold this data for a certain period for possible use by a third party. For instance, the 2004 EU-US agreement on the transfer of passenger data is currently challenged before the European Court of Justice and might be found invalid and annulled.

Precautions will need to be taken to ensure that any cross-border transfer of passenger data is in accordance with European and international privacy laws and agreements. For this reason AEA carriers that are subject to EU law have requested clearance from the European Commission before any additional data can be collected from passengers.

AEA would like to suggest that instead of relying on the onerous and misconceived approach described in the NPRM, CBP would revert to a simple and effective solution where it would be providing carriers with a supply of passenger locator cards, consistent with an agreed international standard, which the airline would distribute before or during the flight along with the customs and immigration documents. These cards may be then collected upon arrival in the USA by CBP.

* * *

The Association of European Airlines brings together 30 major airlines, who collectively carry more than 300 million passengers each year, employ over 350,000 staff and operate more than 2,500 aircraft.

For further information, please contact the AEA Secretariat:
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